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## **BUSINESS UNITY SOUTH AFRICA COMMENTS ON THE DRAFT PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

### **Introduction**

1. Business Unity South Africa ('BUSA') welcomes the opportunity to submit written comments on the draft Preferential Procurement Regulations as gazetted by the Minister of Finance in accordance with section 5(2) of the Preferential Procurement Policy Framework Act of 2000.
2. BUSA is a confederation of business organisations including chambers of commerce and industry, professional associations, corporate associations and unisectoral organisations. It represents a cross spectrum of South African business, large and small across the economy on macro-economic and cross-cutting policies and issues that affect business at national and international levels. BUSA's function is to ensure that business plays a constructive role in the country's economic growth, development, and transformation and to ensure an environment in which businesses of all sizes and in all sectors can thrive, expand and be competitive. As the principal representative of business in South Africa, BUSA represents the views of its members in a number of national structures and bodies, both statutory and non-statutory.

3. On 8 April 2022, BUSA wrote a letter to the Minister of Finance (attached as **Annexure 1** to this submission) requesting for an extension to submit comments on the draft Preferential Procurement Regulations. Our views remain unchanged as highlighted in the letter to the Minister.
4. **At the outset, BUSA wishes to underscore its opposition to the proposed amendments to section 5(1)**, read with section 2(1)(b) and (c) and the definition of “prescribed” in section 1, of the Act. It is in our view that the proposed amendments will undermine the Republic’s localisation and industrialisation efforts and policies and the recent Economic Recovery and Reconstruction Plan.

#### **General Comments**

5. BUSA has been actively involved in collaborating with government and other social partners in driving localisation initiatives in South Africa to the extent that post-Covid -19 recovery of the South African economy can be enabled. Localisation and industrialisation are key strategies of the Economic Recovery and Reconstruction Plan and are critical to ensure economic growth and job creation. We therefore note with concern that there is no reference at all to local production and content in the draft Preferential Procurement Regulations (PPRs), 2022, that have been published for comments. This omission, which basically means that the system of “designations” is no longer valid, means also that there is no more framework available for government to promote and protect local production and content in public procurement.
6. The drafting of the new PPRs was initiated as a result of the Constitutional Court (CC) ruling on Case CCT 279/20, in order to give effect to the Court decision. We contend that the decision of the Constitutional Court does not dispute at all the right of government to promote and protect local production and content in public procurement, but rather emphasises this right as part of its mandate, and only

dismisses the manner in which this right was implemented. BUSA also wish to bring to your attention the negative consequences of the omission on the South African economic environment, not only from a tangible perspective but also from an intangible perspective, that is the loss of confidence in the South African government.

## **Constitutional Court Ruling**

7. The PDF document containing the ruling of the CC is fifty-one pages long, but there is no mention at all to local production and content. There is actually no trace of the word “local” in the entire document. It is therefore surprising that the aspect of local production and content has become a “casualty” of the CC ruling. Indeed, the ruling starts like this:

### ***Introduction***

7.1. [1] The procurement process is a critical part of a functional government service delivery mechanism. Our Constitution explicitly mandates that this process takes on not only the pragmatic purpose of attaining services or supplies, but the additional aim of achieving societal transformation.

7.2. We fully understand, and of course respect, the decision of the CC, but we wish to remark that the right of government to leverage public procurement to achieve societal transformation is “explicitly” enshrined in our Constitution. The fact that the existing framework was implemented illegally does not prevent National Treasury from promoting and protecting local production and content in another form. We therefore kindly request National Treasury to reconsider this omission and include specific reference to the promotion and protection of local production and content.

7.3. In this sense, BUSA would be happy to engage with National Treasury and other relevant stakeholders to design a new effective and efficient framework to

promote and protect local production and content in public procurement that complies with law and gives proper effect to the mandate of the Constitution.

## **Consequences**

8. Industry leaders and observers agree that the most immediate consequence of the repeal of the old Preferential Procurement Regulations, 2017, will be a flooding of cheap imports of “designated” products destroying all the effort and gains made to date in building local production capacity through the Preferential Procurement framework. This would in turn lead to factory closures, job losses and related negative socio-economic impacts, such as social unrest and lower tax revenue. These are the tangible consequences and should be enough to reconsider the omission.
  
9. There are however also intangible consequences of the omission that can result in a longer term and even worse negative impact on the economy. The private sector is expected to play a major role in driving localisation and industrialisation in South Africa. Industry “Champions” have been nominated in various sectors, and business associations such as BUSA and its members are all actively involved in driving localisation initiatives. We continuously engage with private sector leaders to ensure that localisation remains as our top strategic priority and ensure that individual companies address it as such.
  
10. BUSA believe that, if the new PPRs do not include any reference to local production and content, South Africa will not have these industries leading to uncontrollable high unemployment rate, crime, and unsustainable increase in social spending. Therefore, the South African government is expected to play a lead role in driving localisation and industrialisation and set an example for private sector to follow. If government cannot provide a practical framework to promote and protect local production and content in public procurement, the private sector will lose confidence in government’s efforts to promote economic growth and will stop supporting the cause, loss of investments made within the current policy

context, and lots of invaluable goodwill will be lost because of an “omission”. The proposed regulations will, therefore, be regressive step for an industrial policy, economic growth, and development of key manufacturing sectors.

## **Conclusion**

11. BUSA fully understand that the previous PPRs of 2017 are not valid anymore and cannot simply be reinstated and reiterate that BUSA and its members would be happy to engage to design a new framework that complies with law and gives proper effect to the mandate of the Constitution.
  
12. Considering above, BUSA urges the National Treasury to consider alternatives to enacting proposals/ amendments contained in the draft regulations. As indicated above, BUSA (and its members) is ready to avail itself and develop and provide an alternative legal framework for inclusive economic growth. Business in general, stands ready and willing to engage government on fit-for-purpose regulations, projects, and partnerships to support and accelerate sustainable economic development agenda.

Yours Sincerely,

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